

January 2002

The Journey from Rio to Johannesburg: Ten Years of Forest Negotiations, Ten Years of Successes and Failures

Melanie Steiner

Follow this and additional works at: <http://digitalcommons.law.ggu.edu/ggulrev>



Part of the [Environmental Law Commons](#)

Recommended Citation

Melanie Steiner, *The Journey from Rio to Johannesburg: Ten Years of Forest Negotiations, Ten Years of Successes and Failures*, 32 Golden Gate U. L. Rev. (2002).
<http://digitalcommons.law.ggu.edu/ggulrev/vol32/iss4/7>

This Article is brought to you for free and open access by the Academic Journals at GGU Law Digital Commons. It has been accepted for inclusion in Golden Gate University Law Review by an authorized administrator of GGU Law Digital Commons. For more information, please contact jfischer@ggu.edu.

ARTICLE

THE JOURNEY FROM RIO TO JOHANNESBURG: TEN YEARS OF FOREST NEGOTIATIONS, TEN YEARS OF SUCCESSES AND FAILURES

MELANIE STEINER*

I. INTRODUCTION

The Johannesburg Summit, formally entitled the World Summit on Sustainable Development (WSSD) is a significant milestone, marking ten years since the United Nations Conference on Environment and Development (UNCED, or “Rio Summit”) and thirty years from the Stockholm Summit on the Human Environment. The WSSD – slated to take place from August 26 through September 4, 2002 – is a critical opportunity for governments and stakeholders alike to come together

* Melanie Steiner is a Policy Adviser with World Wide Fund for Nature (WWF International) and the WWF Coordinator for the World Summit on Sustainable Development. This position requires coordination of the WWF network of offices across the world, as well as provision of policy support to the global WWF programmes on campaigns related to the Summit. In addition, Melanie works part-time on forest advocacy issues for the WWF global forests programme and as a global forest policy consultant for IUCN – the World Conservation Union. Melanie has been following global forest policy negotiations throughout most of the IFF and UNFF negotiations, and completed a Masters thesis on global forest policy at the University of London, UK in 1999. Melanie graduated from law school in Toronto, Canada in 1992 and worked as a commercial litigation lawyer in Canada for six years before going back to school in 1998 to do her Masters degree in environmental law in the UK.

This article is current with respect to the state of negotiations on forestry protection as of February 8, 2002.

630 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 32:4

and find practical ways to operationalize sustainable development by focusing not only on substantive commitments, but also on means of implementation of commitments already made. The aim is also to improve and reinvigorate the global commitment to a North-South partnership¹ that will help achieve the objectives of conservation and sustainable development.

The WSSD will take place at the Heads of State level, and is intended to be the first ever truly multistakeholder Summit. By this, it is meant that all major sectors of society, including groups such as Non-Governmental Organizations (NGOs) and business and industry, were given an opportunity to help shape the Summit agenda through regional preparatory processes.² Furthermore, stakeholders will be able to make commitments and pledges to action at the event itself, since the Summit will not only be focusing on government negotiated consensus documents, but also on innovative and forward-thinking pledges by all.

The past decade has seen a proliferation of environmental treaties and other commitments made, in areas ranging from climate change, to toxics & chemicals, and biological diversity. Forests have been, and continue to be, an extremely contentious and politically sensitive area. Forests were firmly placed on the global agenda during the UNCED process, which was the catalyst for creating a formal discourse on the subject. Despite protracted negotiations in the lead up to, and during the Summit itself, participants remained divided on how to deal with this issue on a global scale. Issues such as sovereignty rights, development goals, trade relationships, and a growing North-South divide that emerged during the Rio process created an inhospitable environment in which to forge consensus on legally binding options.

Accordingly, instead of producing a multilateral environmental treaty, the Rio Summit resulted in a non-legally binding set of forest principles.

¹ See generally official U.N. website for the Johannesburg Summit 2002 at <http://www.johannesburgsummit.org> (referring to the importance of striking a balance between developing and industrialized countries).

² *Id.*, available at http://www.johannesburgsummit.org/html/prep_process.html (for particulars on the preparatory process).

These forest principles, agreed at the highest political level, set the stage for future intergovernmental negotiations – namely the Intergovernmental Panel on Forests (IPF) and its successor, the Intergovernmental Forum on Forests (IFF) that deliberated from 1995-2000. Now, nearly ten years after Rio, agreement has finally been reached – for the time being at least – on an appropriate international arrangement on forests. This arrangement has taken the form of a new, institutionalized United Nations Forum on Forests (UNFF), along with a Collaborative Partnership on Forests (CPF) comprised of a number of member organizations, largely drawn from what was previously the Intergovernmental Task Force on Forests (ITFF) formed under the auspices of the IPF process.

After years of intense and complex negotiations, the Johannesburg Summit gives us a lens through which to assess where we have been, and where we are going with respect to the global forest agenda. This “lens” of reflection is in fact part of the WSSD mandate and process, since countries have been called on to assess progress over the past ten years by reporting on impediments to action, solutions, and lessons learned. These country reports are to be submitted to the UN Commission on Sustainable Development (CSD) – acting as the official Summit Secretariat – as part of the official Summit preparations.

Since Rio, a great deal of dialogue and changes in the global forest architecture have occurred, including the growth of regional criteria and indicator (C&I) processes for sustainable forest management, development of new national forest programmes in many countries, and the establishment of the new international arrangement on forests mentioned above. Commitments have been made at all levels, in the form of IPF/IFF proposals for action, adoption of a forest work programme under the Convention on Biological Diversity, and regionally through the C&I processes. Furthermore, new issues have emerged on the scene as being critical post-Rio, including illegal logging/forest law enforcement, forest fires, and the role of forests as carbon sinks with respect to climate change mitigation.

In light of these myriad changes in global forest governance, it is timely to reflect on what has become of the set of forest principles agreed to at Rio. The WSSD process gives us this opportunity, as well as a vehicle through which to make pro-

632 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 32:4]

gress on outstanding issues. Important questions exist, such as whether and how the Forest Principles are being implemented, or whether they have been superseded and subsumed by other processes and commitments. Has the vision of the Forest Principles been realized, and to what extent? This paper addresses the question of what, if any progress has been made globally to halt and reverse the upward trend in deforestation, looking at this question in the context of the Earth Summit process. In so doing, the evolution of global forest policy over the past decade will be tracked and analyzed, followed by a discussion of where we are headed, and finally what challenges and opportunities exist as we head to Johannesburg and beyond.

II. NEGOTIATIONS OVER THE PAST DECADE

A. THE POLITICS AND OUTPUTS OF THE RIO EARTH SUMMIT (UNCED), 1992

Prior to the Rio conference in 1992, a number of organizations had already turned their mind to the issue of global forest governance, with some going so far as to prepare various legally binding draft forest instruments for use as a template at Rio.³ With forests firmly on the agenda at Rio, the negotiation of a Global Forest Convention (GFC) became a distinct possibility for the Summit, thereby rounding out the negotiations scheduled to take place with respect to biodiversity and climate change. However, negotiations toward a GFC became quickly sidetracked, due to a growing divide appearing between North-South negotiating partners. The pro-anti GFC debate overtook discussions, but certain highly contentious issues prevented consensus being reached on a legally binding output. Issues such as the underlying causes of deforestation, Northern consumption patterns, and appropriate financial mechanisms and technology transfer, prevented the achievement of consensus on appropriate modalities to govern the world's forests. What resulted instead was the creation of certain "soft law" instru-

³ *Possible Main Elements of an Instrument (Convention, Agreement, Protocol, Charter, etc.) for the Conservation and Development of the World's Forests*, U.N. Food and Agriculture Organization (FAO) [hereinafter *FAO Draft*] (the most notable draft submitted).

ments, namely Chapter 11 of Agenda 21 (Combating Deforestation),⁴ and the “Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests” (Forest Principles).⁵

1. *Forest Principles*

The Forest Principles, while not legally binding, still symbolized a political breakthrough at Rio as representing a first step in consolidating world opinions, and having applicability to all types of forests. Furthermore, the Forest Principles were agreed to at the highest political level, and are – at the very least – morally binding on countries. These Principles were intended to be comprehensive, enshrining concepts ranging from environmental issues like protection, restoration, and the sustainable management of forest resources and forest lands, to the rights of indigenous peoples, participation of local communities and NGOs, and cross-cutting issues such as financial resource transfer, international trade, and capacity-building. More particularly, there are fifteen core principles laid out within the document, meant to provide a holistic picture of the forest regime. Critical aspects of the principles/elements include *inter alia* the following:

- (Stockholm/Rio Principle 21/2): Sovereign right of countries to exploit their own resources pursuant to their own environmental policies and responsibility not to cause damage to others;⁶
- Sovereign right to use, manage and develop forests in accordance with their development needs and level of socio-economic development;⁷

⁴ *Agenda 21*, U.N. Conference on Environment and Development (UNCED)(Rio de Janeiro, June 14, 1992), Sect. II, Ch. 11, at ¶ 11.1, U.N. Doc. A/CONF.151/26 (1992), available at <http://www.un.org/esa/sustdev/agenda21text.htm>.

⁵ *Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests*, Report of the U.N. Conference on Environment and Development (Rio de Janeiro), Annex III, U.N. Doc. A/CONF.151/26 (Vol III) (1992), available at <http://www.un.org/documents/ga/conf151/aconf15126-3annex3.htm>. [hereinafter *Forest Principles*].

⁶ *Id.* at 1.

⁷ *Id.* at 2.

634 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 32:4

- Development of national frameworks for sustainable forest management;⁸
- Recognition of the role of all types of forests in maintaining ecological processes (e.g.: watersheds, biodiversity storehouses;)⁹
- Recommendations on national forest policies;¹⁰
- Role of forests in meeting energy requirements (bio-energy, fuelwood) and recognition of values of other forest goods and services;¹¹
- Promotion of a supportive international economic climate to sustained and environmentally sound development of forests, including promotion of sustainable patterns of production and consumption;¹²
- Promotion of the greening of the world, (e.g.: reforestation, afforestation and forest conservation) as supported by international financial and technical cooperation;¹³
- Provision of new and additional financial resources to enable sustainable management;¹⁴
- Access to and transfer of environmentally sound technologies and know-how on favorable terms;¹⁵
- Strengthening of scientific research, forest inventories and assessments carried out by national institutions (e.g.: information exchange, capacity-building;)¹⁶
- Recommendations on fair trade in forest products and internalizing costs into market forces and mechanisms;¹⁷ and
- Intersectoral recommendations, in particular with regard to pollution control.¹⁸

⁸ *Id.* at 3.

⁹ *Id.* at 4.

¹⁰ *Id.* at 5.

¹¹ *Id.* at 6.

¹² *Id.* at 7.

¹³ *Id.* at 8.

¹⁴ *Id.* at 9-10.

¹⁵ *Id.* at 11.

¹⁶ *Id.* at 12.

¹⁷ *Id.* at 13.

2. Chapter 11 of Agenda 21

The other forest-specific output agreed at Rio was Chapter 11 of Agenda 21 – Combating Deforestation. Chapter 11 is divided into four sections:

- Sustaining the multiple roles and functions of all types of forests, forestlands and woodlands;
- Enhancing the protection, sustainable management, and conservation of all forests, and the greening of degraded areas, through forest rehabilitation, afforestation, reforestation and other rehabilitative means;
- Promoting efficient utilization and assessment to recover the full valuation of the goods and services provided by forests, forest lands and woodlands; and
- Establishing and/or strengthening capacities for the planning, assessment and systematic observations of forests and related programmes, projects and activities, including commercial trade and processes.

Within those areas, Governments agreed to undertake a wide range of actions, including:

- Establish, expand and manage protected area systems, including conservation of forests in representative ecological systems and landscapes;¹⁹
- Rehabilitate degraded natural forests to restore productivity and environmental contributions;²⁰
- Promote adequate legislation and other measures to control conversion to other types of land uses;²¹
- Ensure the sustainable use of biological resources and conservation of biological diversity;²² and

¹⁸ *Id.* at 15.

¹⁹ Agenda 21, *supra* note 4, at 11.12-11.13.

²⁰ *Id.*

²¹ *Id.* at 11.10-11.19, and 11.29-11.40.

²² *Id.*

636 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 32:4]

- Developing, adopting and strengthening national accounting programmes for assessing the economic and non-economic value of forests.²³

To facilitate these objectives, various activities are laid out, including those that are management-related, data and information activities, and international and regional cooperation and coordination.

3. *Convention on Biological Diversity and UN Framework Convention on Climate Change*

The other two Rio outputs that impact forests are the Convention on Biological Diversity (CBD)²⁴ and the UN Framework Convention on Climate Change (FCCC).²⁵ As forests are the greatest protectors and providers of biodiversity, the CBD represents a potentially very useful avenue for action on forests. The Convention also has the strength of being legally binding, although the language in the treaty is fairly permissive. The CBD operates on the basis of five thematic work programmes, of which forest biological diversity is one. For many years, however, discussions and outputs out of the CBD on forests have been quite vague, with the work programme²⁶ adopted in 1998 at the 4th Conference of the Parties in Slovakia focusing more on research, information collection, case studies

²³ *Id.* at 11.20-11.28.

²⁴ U.N. Conference on Environment and Development: Convention on Biological Diversity (Rio de Janeiro), *reprinted in* 31 ILM 822 (1992).

²⁵ U.N. Conference on Environment and Development: Framework Convention on Climate Change (New York), U.N. Doc. A/CONF.151.26 (Vol. I), *reprinted in* 31 ILM 849 (1992) (with respect to climate change, the greatest applicability of forests lies in their role as carbon "sinks." This issue became highly charged and one of the most contentious at Kyoto Protocol negotiations over the past few years. Many industrialized, forested countries were looking to use forests to meet their emissions reduction targets, with other countries seeking to limit or even exclude forests from the equation. In the end, sinks have been included in the Protocol, as agreed at the 7th Conference of the Parties (COP-7) held in November 2001 in Marrakech and will therefore take on greater significance. The other related issue is with regard to climate change forest adaptation strategies – in order to minimize damage done to forests as a result of this issue).

²⁶ Fourth Ordinary Meeting of the Conference of Parties to the Convention on Biological Diversity [hereinafter *COP-4*] (Bratislava, Slovak Republic), Work Programme IV, *adopted by* Decision IV/7 (1998).

and other such scoping activities. However, various recent initiatives have been undertaken by the CBD, with the hope that it will implement more action-oriented policies on forests and fulfill its enormous potential in this regard. One of these actions was the decision by the CBD at its fifth session (COP-5)²⁷ to, *inter alia*, establish the *ad hoc* Technical Working Group on Forests (AHTEG) to provide advice on scientific programs and international cooperation in research and development and to identify options for the conservation and sustainable use of forest biological diversity. The AHTEG was given a time-limited mandate to meet through to SBSTTA-7,²⁸ and to develop recommendations for that meeting of scientific and technical experts. The seventh Meeting of SBSTTA in November 2001 developed a draft programme of work for consideration by the COP in April 2002. Among other things, the Programme includes the following elements:

- Guidance for applying the ecosystem approach in forest ecosystems;
- Assessing the adequacy, representativeness and management effectiveness of forest protected areas;
- Restoration practices and systems in accordance with the ecosystem approach;
- Maintaining and restoring forest biodiversity to mitigate impacts of climate change;
- Practices and plans and capacity for prevention of harmful human-induced fires; and
- Implementation of tracking and chain-of-custody systems to tackle illegal trade in forest products.

²⁷ Fifth Ordinary Meeting of the Conference of Parties to the Convention on Biological Diversity [hereinafter *COP-5*] (Nairobi, Kenya, May 2000).

²⁸ Referring to the Subsidiary Body on Scientific, Technical and Technological Advice, established by Article 25 of the Convention on Biological Diversity. See www.biodiv.org/convention/sbstta.asp (specifics on the mandate, activities and outputs of the AHTEG).

638 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 32:4]

Furthermore, a new Experts Group has been formed under the aegis of the CBD, namely the *ad hoc* Technical Expert Group on Biological Diversity and Climate Change. This expert group met in Helsinki, Finland for the first time in January 2002, with a mandate of carrying out a pilot assessment to prepare scientific advice to integrate biodiversity considerations into the implementation of the Climate Change Convention and Kyoto Protocol. This will be a critical first step in a wider assessment of the climate change/biodiversity linkages, on the basis of the ecosystem approach. The Group is expected to meet twice and to report to SBSTTA-8.

In addition to the formation of these expert groups, forest biological diversity was made one of three priority agenda items at the sixth Conference of the Parties (COP-6) scheduled for April 2002 in the Hague, Netherlands,²⁹ with the goal of shifting the Work Programme from research to action.

In the end, the Rio Summit produced a multitude of forest-related commitments, both legally and non-legally binding, and was a springboard to many other forest-related initiatives and commitments.

Although the Forest Principles were as far as countries were able to go in terms of forging consensus, they did point the way forward, and crystallized a need for further action. It was on the basis of the work done in Rio that formed the basis of the *ad hoc* intergovernmental processes that were to follow.

B. THE INTERGOVERNMENTAL PANEL ON FORESTS (IPF)

The three years following The Rio Earth Summit marked a period of confidence-building among negotiating partners. Following this phase, delegates at the third session of the Commission on Sustainable Development (CSD-3) agreed on the creation of an *ad hoc* Intergovernmental Panel on Forests (IPF), to be given a time-limited, two year mandate to review issues and report back to the CSD in 1997. The IPF was not established to implement the Forest Principles that emerged out of Rio, but rather to take forward the good work that was

²⁹ Provisional Agenda, Convention on Biological Diversity Conference of the Parties-6, available at www.biodiv.org/doc/meetings/cop/cop-06/official/cop-06-01-en.pdf.

started during the 1992 Earth Summit and produce concrete targets, capable of implementation action.

The Panel's programme of work was grouped into five categories:³⁰

- Implementation of the UNCED forest-related decisions at the national and international levels, including an examination of sectoral and cross-sectoral linkages;
- International cooperation in financial assistance and technology transfer;
- Scientific research, forest assessment and the development of criteria and indicators for sustainable forest management;
- Trade and environment in relation to forest products and services; and
- International organizations and multilateral institutions and instruments, including appropriate legal mechanisms.³¹

The IPF was innovative inasmuch as it was the first “umbrella” forum, intended to deal comprehensively with all forest-related issues. The point of departure of the IPF was to pursue consensus, formulate options for further action in order to combat deforestation and forest degradation, and to promote sustainable forest management practices of all types of forests. In so doing, the IPF was called upon to take a multidisciplinary approach, stressing participation of all relevant stakeholders.

In order to assist in the completion of this programme of work, an informal, high level Interagency Task Force on Forests (ITFF) was created under the aegis of the IPF to feed into the Panel's various Programme Elements.³² The Task Force consisted of a group of diverse forest-related bodies, covering

³⁰ *Programme of Work of the Intergovernmental Panel on Forests*, U.N. ESCOR Doc. E/CN.17/IPF/1995/2.

³¹ *Id.* at <http://www.un.org/esa/sustdev/aboutiff.htm>.

³² The Informal, High Level Interagency Task Force on Forests (ITFF), at <http://www.un.org/esa/sustdev/aboutiff.htm> (following the establishment of the IPF in April 1995, the ITFF was set up in Geneva in July 1995 to coordinate the inputs of international organizations to the forest policy process).

640 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 32:4]

the full range of issues being pursued by the IPF, to allow for the widest possible input and participation of stakeholders into the process.³³ The ITFF mandate was to collaborate on the provision of information to the Secretariat, to coordinate the inputs of other international organizations, and to focus on the proposals for action set out by the IPF.

The four IPF sessions debated and contemplated all five programme elements, ultimately agreeing to over one hundred Proposals for Action (PFAs) related to sustainable forest management. In some cases, however, matters were left pending either because consensus could not be reached, or because further analysis and discussion were required. One of the recommendations to emerge out of the final IPF session (IPF-4) was to continue the Intergovernmental dialogue post-IPF in the hopes of achieving consensus on critical issues, including the Programme Element on International Arrangements and Mechanisms, one of the most contentious. The IPF also underscored the need for enhanced international efforts in areas such as governance, international institutions, and organizations and instruments, acknowledging that no single multilateral body was bestowed with the power or mandate to deal holistically with all types of forests. The Panel further acknowledged a number of binding instruments which are relevant to forests, but specifically commented that these instruments do not deal comprehensively or holistically with all forest-related issues.³⁴ Accordingly, a recommendation was made in the final IPF report to establish a successor body to continue working towards achieving consensus on issues that could not be resolved through the IPF process.

³³ *Id.* (ITFF members include: the Centre for International Forestry Research (CIFOR), the UN Food and Agricultural Organization (ITFF Task Manager), the International Tropical Timber Organization (ITTO), the Secretariat of the CBD, the United Nations Department for Social and Economic Affairs (UN/DESA), the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP), and the International Bank for Reconstruction and Development (IBRD, or World Bank)).

³⁴ *Report of the Ad Hoc Intergovernmental Panel on Forests on its Fourth Session* (New York), U.N. ESCOR Doc. E/CN.17/1997/12, at ¶ 140 (1997), available at <http://www.un.org/documents/ecosoc/cn17/ipf/1997/ecn17ipf1997-12.htm>.

C. THE INTERGOVERNMENTAL FORUM ON FORESTS (IFF)

The outcome of the IPF was endorsed by the fifth session of the CSD (CSD-5) in April 1997 and then by the 19th Special Session of the UN General Assembly (UNGASS) a few months later. In light of the issues left outstanding, and in keeping with the recommendations of the Panel, UNGASS recommended that the IPF be continued. The final step was the United Nations Economic and Social Council (ECOSOC) decision made in July 1997 to establish an *ad hoc* Intergovernmental Forum on Forests (IFF) to continue the work of the Panel over the next three years. The mandate of the IFF was three-fold:³⁵

- Promoting and facilitating the implementation of the proposals for action of the IPF and reviewing, monitoring, and reporting on progress in the management, conservation, and sustainable development of all types of forest;
- Considering matters left pending and other issues arising from the programme elements of the IPF process; and
- International arrangements and mechanisms to promote the management, conservation and sustainable development of all types of forests.

Under these three categories, the IFF was tasked with addressing the following programme elements:³⁶

- I.a. Promote and facilitate implementation of the IPF's proposals for action;
- I.b. Monitor progress in implementation towards sustainable forest management;

³⁵ U.N. G.A. Res. A/Res/S-19/2 (1997). See also, *Proposed Programme of Work of the Intergovernmental Forum on Forests*, U.N. ESCOR Doc. E/CN.17/IFF/1997/2, available at <http://www.un.org/documents/ecosoc/cn17/iff/1997/ecn17iff1997-2.htm>.

³⁶ *Adoption of the Agenda and Other Organizational Matters*, U.N. ESCOR Doc. E/CN.17/IFF/1997/1, available at <http://www.un.org/documents/ecosoc/cn17/iff/1997/ecn17iff1997-1.htm>.

642 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 32:4

- II.a. Consider matters left pending on the need for financial resources;
- II.b. Consider matters left pending on trade and environment;
- II.c. Consider matters left pending on the transfer of environmentally sound technologies to support sustainable forest management;
- II.d. Consider other issues arising from the programme elements of the IPF process needing further clarification (including underlying causes of deforestation and forest degradation; traditional forest-related knowledge (TFRK), valuation of forest goods and services; assessment; monitoring and rehabilitation of forest cover in environmentally critical areas; forest conservation; forest research; economic instruments; and future supply and demand of wood and non-wood forest products and services);
- II.e. Consider forest-related work of international and regional organizations.

III. INTERNATIONAL ARRANGEMENTS AND MECHANISMS TO PROMOTE THE MANAGEMENT, CONSERVATION, AND SUSTAINABLE DEVELOPMENT OF ALL TYPES OF FORESTS.

During the IFF process, over one hundred new proposals for action were agreed to in relation to issues ranging from national forest programmes, to protected areas and forest conservation, funding and incentives for forest conservation, financial assistance and technology transfer, and trade in forest products and services to name a few.

The IFF met four times, with the fourth and final session convening from January 31 – February 11, 2000 in New York. The programme elements discussed at IFF-4 included: promoting and facilitating implementation of the Intergovernmental Panel on Forests' (IPF) proposals for action; monitoring progress in implementation of the IPF proposals; the need for financial resources; trade and environment; transfer of environmentally sound technologies (ESTs) to support sustainable for-

est management (SFM); issues needing further clarification;³⁷ and international arrangements and mechanisms to promote the management, conservation and sustainable development of all types of forests. Despite the difficulty with a number of these elements, the IFF succeeded in forging consensus and agreed on proposals for action on all programme elements. Protracted and contentious negotiations also ensued on whether a legally binding instrument should constitute part of an international arrangement on forests, ultimately leaving delegates unable to agree on this approach. Instead, a compromise decision was reached – after hours of hard fought negotiations – to establish a United Nations Forum on Forests (UNFF).

This decision to emerge out of the dying moments of IFF-4 marked the culmination of years of hard fought policy discussions. It was further decided that the UNFF should be established to, *inter alia*:

- Facilitate and promote implementation of agreed actions;
- Provide a forum for policy development;
- Enhance coordination among international institutions and instruments;
- Monitor and assess progress through reporting; and
- Strengthen political commitment.³⁸

Within five years, the UNFF was further endowed with a mandate to explore the parameters for a possible legal framework (convention) on forests. Thus, nearly ten years following Rio, a home was created to deal holistically with forest-related issues – the underlying premise behind the Forest Principles.

³⁷ *Report of the IFF on its Fourth Session*, U.N. ESCOR Doc. E/CN.17/2000/14 (issues needing further clarification were: underlying causes of deforestation; traditional forest-related knowledge; forest conservation and protected areas; forest research; valuation of forest goods and services; economic instruments; future supply of and demand for wood and non-wood forest products; and assessment, monitoring and rehabilitation of forest cover in environmentally critical areas).

³⁸ *Id.* (regarding particulars of the IFF decision to establish the UNFF).

IV. THE UNITED NATIONS FORUM ON FORESTS (UNFF)

The UNFF was established to create an umbrella forum that would house all global forest-related issues and create cohesion in the sector. Based on the outputs of the first substantive session held in June 2001 in New York, it has become clear that implementation of forest-related commitments will be spearheaded by the Forum. As a result of the UNFF's critical role, this paper assesses separately the key procedural and substantive aspects of the new international arrangement on forests.

A. BIRTH OF THE UNFF

On September 22, 2000, the Economic and Social Council of the UN (ECOSOC) unanimously adopted a Resolution endorsing IFF-4's recommendation to establish the UNFF.³⁹ The Resolution outlined the main objective of the UNFF, namely to promote the management, conservation and sustainable development of all types of forests and to strengthen long-term political commitment to this end. The UNFF was established as a subsidiary body of ECOSOC, comprised of all member states of the UN and of the specialized agencies, with full and equal participation, including voting rights. The Resolution affirmed the transparent and participatory nature of the UNFF, stipulating furthermore that the same arrangements that apply to the CSD will also apply to the UNFF. This guarantees the participation of NGOs and other stakeholders, building on the format that was used throughout the IPF/IFF process.

The underlying foundation of the UNFF as codified in the Resolution is, among other things, the Rio Forest Principles document itself. As the Resolution states:

[T]he UNFF will work on the basis of a multi-year programme of work, drawing on the elements reflected in the Rio Declaration on Environment and Development, the Forest Principles, chapter 11 of Agenda 21, and the intergovernmental Panel on

³⁹ See E.S.C. Res. E/2000/35, *reprinted in* REPORT OF THE INTERGOVERNMENTAL FORUM ON FORESTS ON ITS FOURTH SESSION, U.N. ESCOR DOC. E/CN. 17/2000/14 (2000), at APPENDIX, §III, 3(a), *available at* <http://www.un.org/documents/ecosoc/cn17/2000/ecn172000-14.htm>.

Forests/intergovernmental forum on forests proposals for Action.⁴⁰

This paragraph of the Resolution is of paramount importance, as it imbues the UNFF with the mandate of overseeing a programme of work that includes implementing the Rio Forest Principles. The Multi-year Programme of Work (MYPOW) is the “roadmap” of the UNFF, and the vehicle through which action will be taken. In other words, it is logical to deduce that the implementation of the Forest Principles, among other things, is being led by the UNFF pursuant to its MYPOW.

As the “implementer” of global forest commitments – inasmuch as they can be implemented by international level activity – the UNFF is of supreme significance. This places quite a burden on a new Forum that will be in its infancy for some time, and is still feeling its way.

B. FUNCTIONS OF THE UNFF

The specific functions of the UNFF, as laid out in the ECOSOC Resolution include the following:

- To facilitate and promote the implementation of the IPF/IFF Proposals for Action as well as other actions which may be agreed upon, including through national forest programs and other integrated programs relevant to forests;⁴¹
- To provide a forum for continued policy development and dialogue among governments, which would involve international organizations and other interested parties, including major groups as identified in Agenda 21;⁴²
- To enhance cooperation as well as policy and program coordination on forest-related issues among relevant international and regional organizations, institutions and instruments, as well as contribute to synergies among them, including coordination among donors. To also foster cooperation, including North-South and public-

⁴⁰ *Id.* at appendix, §IV, 6.

⁴¹ *Id.* at appendix, §II, ¶2(a).

⁴² *Id.* at appendix, §II, ¶2(b).

646 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 32:4]

private partnerships at national, regional and global levels;⁴³

- To monitor and assess progress at the national, regional and global levels through reporting by governments, as well as by regional and international organizations, institutions and instruments;⁴⁴ and
- To strengthen political commitment to the management, conservation, and sustainable development of all types of forests through ministerial engagement.⁴⁵

These functions provide most of the building blocks of an effective mechanism – implementation, continued policy development, and monitoring, assessment and reporting of commitments. Furthermore, the UNFF is given the mandate to act as a coordinating mechanism in terms of global forest governance. However, for its various functions to be carried out, a number of practical details will have to be addressed, including, for instance, ensuring sufficient institutional capacity to review and assess data, and elaborating reporting guidelines and some means of compliance. One of the concerns is that much time will be spent doing just that – ironing out the details of the forum over the next five years, without the concomitant action taken on implementation. In addition, by relying on voluntary and entirely country-driven priority-setting and reporting decisions, it is still unclear what deliverables the UNFF will be able to offer by 2005 and what value it will add.

C. MULTI-YEAR PROGRAMME OF WORK (MYPOW) AND PLAN OF ACTION (POA)

The ECOSOC Resolution states that the Forum will work on the basis of a MYPOW, derived from the Rio outputs and IPF/IFF proposals for action. The Resolution also set out that the UNFF will develop a plan of action (PoA) to guide the implementation of the proposals for action. At the first substantive UNFF session that took place in June 2001 in New York,

⁴³ *Id.* at appendix, §II, ¶2(c)-(d).

⁴⁴ *Id.* at appendix, §II, ¶2(e).

⁴⁵ *Report of the Intergovernmental Forum on Forests on its Fourth Session*, U.N. ESCOR Doc. E/CN. 17/2000/14 (2000), at APPENDIX, §II, ¶2(f), available at <http://www.un.org/documents/ecosoc/cn17/2000/ecn172000-14.htm>.

tireless negotiations were undertaken to clarify the purpose, scope, and content of both of these documents, with initial confusion as to how the two related to each other. In the end, the MYPOW is seen as the overarching policy document to guide the process in general, with the PoA being part of the MYPOW, and more specifically, its practical implementing tool.

1. MYPOW

The MYPOW sets out the elements that each UNFF session will focus on, as well as common, cross-cutting elements to be addressed at each session.⁴⁶ As stated above, this document is the UNFF roadmap, setting out the issues that will come up at each session through 2005. These include:

- UNFF-2: Combating deforestation and forest degradation; forest conservation and protection of unique types of forests and fragile ecosystems; rehabilitation and conservation strategies for countries with low forest cover; rehabilitation and restoration of degraded lands; promotion of natural and planted forests; concepts, terminology and definitions;
- UNFF-3: Economic aspects of forests; forest health and productivity; maintaining forest cover to meet present and future needs;
- UNFF-4: Traditional Forest Related Knowledge (TFRK); forest-related scientific knowledge; social and cultural aspects of forests; monitoring, assessment and reporting, and concepts, terminology and definitions; criteria and indicators of sustainable forest management.

The final session (UNFF-5) will include a review of progress, including considering the parameters of a mandate for

⁴⁶ See *Multi-year Programme of Work of the United Nations Forum on Forests: Report of the Secretary General*, U.N. Forum on Forests, (First substantive session, New York), U.N. ESCOR Doc. E/CN.18/2001/5 (2001), available at http://www.un.org/esa/sustdev/unffdocs/ecn182002_1.pdf (common items for each session include: multi-stakeholder dialogues; enhanced cooperation and policy and program coordination, inter alia with the CPF; country experiences and lessons learned; emerging issues relevant to country implementation; intersessional work; monitoring, assessment and reporting; implementation of the Plan of Action; promoting public participation; national forest programmes; trade; and enabling environment).

648 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 32:4]

developing a legal framework on all types of forests. This review of progress is part of the UNFF's "monitoring, assessment, and reporting" (MAR) function, one aspect of which is to review the effectiveness of the international arrangement as a whole.

2. *Plan of Action*

The first substantive session of the UNFF (UNFF-1), held from June 11 - 22, 2001 in New York, adopted a 'Plan of Action', whose stated purpose is to guide more effective and coherent implementation of the IPF/IFF proposals for action. The Plan of Action refers, *inter alia*, to national prioritisation of proposals for action to be implemented, national forest programmes, voluntary reporting, allocation of financial resources and the role of trade in implementation. Currently, it is constituted as a framework for encouraging implementation, rather than a plan of what will be implemented, by whom, and with what resources. The Plan of Action (PoA) is a short document, meant to guide the effective and coherent implementation of the IPF/IFF proposals for action. The PoA will be put forward for endorsement at UNFF-2 in New York⁴⁷ at the high-level ministerial segment slated to take place during the second week of the session. The ministerial segment will be of particular import, as the key issue on the agenda will be UNFF inputs into the Johannesburg Summit.

The actual Plan is laid out in an Annex to the Decision on the PoA, and stipulates *inter alia*:

- The responsibility for implementation of the proposals for action lies with countries, which will set their own priorities, targets and timetables;
- Implementation of the PoA will require establishment of national focal points, cooperation among the CPF members, bilateral donors and countries, and public/private partnerships, and active stakeholder participation;

⁴⁷ *Provisional Agenda, U.N. Forum on Forests* (Second Session, New York) U.N. ESCOR Doc. E/CN.18/2002/1, available at http://www.un.org/esa/sustdev/unffdcs/ecn182002_1.pdf. UNFF-2 was held from March 4-15, 2002. (originally scheduled to occur in San Jose, Costa Rica, the session was moved to New York, at UN headquarters).

- Suggestion to cluster the proposals for action,⁴⁸ possibly according to the 16 elements listed in the report of the Secretary General;⁴⁹
- Agreement to develop or strengthen, as appropriate, national forest programmes;
- Commitment to report progress on implementation on a voluntary basis; and
- UNFF activities include meetings, country-led initiatives and other intersessional work.

D. THE COLLABORATIVE PARTNERSHIP ON FORESTS (CPF) – ITS ROLE, AND RELATIONSHIP TO THE UNFF

In addition to the decision to establish the UNFF, the ECOSOC Resolution further invited heads of UN organizations, as well as heads of other relevant international and regional organizations, institutions and instruments to form a collaborative partnership on forests (CPF) akin to the ITFF that was established to support the work of the Panel. The

⁴⁸ *Towards the Development of the United Nations Forum on Forests Plan of Action: Report of the Secretary-General*, U.N. Forum on Forests (First Substantive Session, New York), U.N. ESCOR Doc. E/CN.18/2001/6 (2001), at n. 6, available at <http://www.un.org/esa/sustdev/unffdocs/ecn182002-6.pdf>, referring to The Intergovernmental Panel on Forests and the Intergovernmental Forum on Forests: Summary of Proposals for Action, Australia Department of Agriculture, Fisheries And Forests (2000), available at <http://www.affa.gov.au/content/publications.cfm?category=forestry> (one example of this is the clustering exercise undertaken by the Government of Australia, whereby 153 IPF proposals for action were summarized, and subsequently consolidated. The idea was to group similar or related actions together and thereby remove duplication. Related thematic headings were incorporated into major categories, e.g.: implementation within countries; international cooperation; trade and environment; and work of international organizations.).

⁴⁹ *Id.* at box 1. (Set of 16 Elements based on *U.N. Conf. On Environment and Development, IPF and IFF Deliberations on Forests*. This includes: formulation and implementation of national forest programmes; promoting public participation; combating deforestation and forest degradation; traditional forest related knowledge (TFRK); forest-related scientific knowledge; forest health and productivity; criteria and indicators for sustainable forest management; economic, social and cultural aspects of forests; forest conservation and protection of unique types of forests and fragile ecosystems; monitoring, assessment and reporting; and concepts, terminology and definitions; rehabilitation and conservation strategies for countries with low forest cover; rehabilitation and restoration of degraded lands, and the promotion of natural and planted forests; maintaining forest cover to meet present and future needs; financial resources; international trade and sustainable forest management; international cooperation in capacity-building and access to, and transfer of environmentally sound technologies to support sustainable forest management).

650 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 32:4]

CPF is the second pillar of the new international arrangement, and is meant to work in tandem with the UNFF. More particularly, the CPF is called upon to support the work of the UNFF and to enhance cooperation and coordination among participants. The ECOSOC Resolution further recommends that the CPF facilitate and promote coordinated and cooperative action, including joint programming, and facilitate donor coordination. The CPF is comprised of the eight original members of the ITFF, plus three additional members so far: the Global Environment Facility (GEF), the Framework Convention on Climate Change (FCCC), and the Convention to Combat Desertification (CCD). Although there is broad membership, it is not so broad as to include NGOs or intergovernmental organizations such as the World Conservation Union. It remains to be decided how and to what extent broader stakeholder input will be received and taken into account by the CPF, as the exact modalities of this relationship have yet to be elaborated.

The inaugural meeting that established the CPF was held on April 4 – 5, 2001 in Rome. Among other things, the CPF agreed to develop a Work Plan based on the UNFF MYPOW and Plan of Action. At the first substantive session of the UNFF (UNFF-1) in June 2001, the Decision on the CPF⁵⁰ invited the CPF and member organizations to:

- Facilitate and support both the UNFF MYPOW and implementation of the PoA;
- Facilitate and/or assist countries' efforts to implement the IPF/IFF proposals for action;
- Continue implementing those IPF/IFF proposals for action specifically targeted to its member organizations; and
- Report its progress on the above at each UNFF session.

⁵⁰ See *Provisional Agenda*, U.N. Forum on Forests, U.N. ESCOR Doc. E/CN.18/2001/4 (2001), at item 4; Initiation of the work of the United Nations Forum on Forests with the Collaborative Partnership on Forests, available at <http://www.un.gov/esa/sustdev/unffdocs/ecn182001-4.pdf>.

In addition, the Decision requests that the CPF member organizations assist the UNFF to monitor, assess, and report on progress towards its objectives, including the use of criteria and indicators for sustainable forest management.

In terms of global forest governance, the CPF could play a pivotal role given the wealth of data and expertise available from member organizations. This could be an important role in the coming months, given that one of the key items likely to be on the agenda for the Johannesburg Summit is international sustainable development governance, and improving synergies and collaboration between institutions, instruments and organizations. The CPF is well placed to act as a bridging mechanism in the forest sector, but it remains to be seen how this will be done, whether relevant major group input will be well received, and whether there is sufficient institutional capacity to make this happen. Another complicating factor is a jurisdictional issue, given that each CPF member organization is accountable to its own individual governing body and not to the UNFF. As such, it will be a prerequisite to action that each member institution and instrument make formal decisions on how to interact with the UNFF, including investing adequate resources to participate and take action.

V. EFFECTIVENESS OF THE EXISTING REGIME – HAVE WE FAILED THE SPIRIT OF THE RIO FOREST PRINCIPLES?

At the outset, it should be stated that there is difficulty in assessing the effectiveness of the Forest Principles in and of themselves. The Principles that derived from the Rio Earth Summit include various consensus elements needed to ensure the conservation and sustainable development of all forests. However, much of the wording in this document is in the form of general declarations, such as the need to promote a supportive economic climate, confirmation of the role of forests in maintaining ecological processes, efforts towards reforestation, afforestation and forest conservation, and the like. The Principles are short on both specifics and implementation action, leaving it quite difficult to gauge progress.

The importance of the Forest Principles is that they represent a point of departure for achieving sustainable forest management and that they are in the form of a consensus document agreed on at the Heads of State level. Furthermore, the Prin-

652 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 32:4

ciples acted as a springboard to years of negotiations and ensuing commitments in the form of IPF/IFF proposals for action. Having said this, others are of the view that the inability to forge agreement on a binding framework for forests evidenced a lack of political will and resulted in a failure at Rio.

The Forest Principles, together with these proposals for action, constitute a holistic view of the forest regime and the work that needs to be done to achieve sustainable forest management. It is, therefore, difficult to assess these items in isolation, as they are all constituent pieces of global forest governance more broadly.

A. ACHIEVEMENTS AND CONSTRAINTS IN THE FOREST SECTOR SINCE RIO

One of the most important questions, and markers on progress, is the rate of change in forest area globally. The United Nations Food and Agricultural Organization (FAO) report on State of the World's Forests 2001⁵¹ measured changes in reforestation, deforestation and afforestation in order to determine the amount of forest cover change that has taken place over the past ten years. The report confirms that the net change in forest area during the 1990s was an estimated loss of 9.4 million hectare annually – a staggering sum.⁵² This represents the difference between the global deforestation rate of 14.6 million hectare per year and the rate of increase of 5.2 million hectare per year. This figure suggests that despite improvements in some areas, forests are still very much in decline, leaving a great deal more to be done.

Activities at all levels have been taking place over the past decade in an attempt to reverse the rate of forest loss and maintain the health and productivity of forest ecosystems. At the international level, the UNFF represents the most significant achievement. Regionally, the criteria and indicator (C&I) processes have been widely adopted, as a means to foster a common understanding of how to measure and make progress

⁵¹ *State of the World's Forests*, U.N. Food and Agricultural Organization (2001), available at <http://www.fao.org/docrep/003/y0900e/y0900e00.htm>.

⁵² *Id.* at pt. III, National-Level Efforts to Support Sustainable Forest Management; Forest Area Trends, 1990-2000.

towards sustainable forest management (SFM). Currently, there are nine C&I processes in effect,⁵³ representing approximately 150 countries and covering much of the world's forests. These processes outline the fundamental elements of SFM, including, for instance, maintenance of forest resources and their contribution to the global carbon cycle; forest health and vitality; biodiversity; maintenance of the productive functions of forests; socio-economic functions and conditions; and the political, legal and institutional frameworks for forest conservation and sustainable forest management. These regional processes have already created a sort of "common framework" and language that can be very useful in terms of understanding the state of the world's forests. Most countries report to at least one of the nine processes on at least some indicators for all of the criteria. There is, however, some variability in that some criteria have been reported on more than others (for instance, socio-economic data is weak). Many of these processes have developed reporting guidelines that can be very useful in making progress toward SFM.

In terms of domestic activities, a number of successes have taken place, including increases in networks of ecologically representative forest protected areas, successful experiences with community involvement in forest management, and an increase in the area of forests certified as sustainably managed. Furthermore, there has been a move towards developing and implementing national forest programmes (NFPs), which are intended to be an iterative, participatory process encompassing the full range of policies, institutions, plans and programmes to manage, use, protect and enhance forest resources nationally. Both the World Bank and the FAO have set up multimillion-dollar facilities to fund NFP processes in developing coun-

⁵³ *Id.* at pt. III, National-Level Efforts to Support Sustainable Forest Management; Criteria and Indicators for Sustainable Forest Management (includes the following: African Timber Organization (ATO), Regional Initiative for the Development and Implementation of National Level Criteria and Indicators for the Sustainable Management of Dry Forests in Asia; Dry-Zone Africa Process on Criteria and Indicators for Sustainable Forest Management; International Tropical Timber Organization (ITTO); Lepaterique Process of Central America on Criteria and Indicators for Sustainable Forest Management; Montreal Process on Criteria and Indicators for the Conservation and Sustainable Management of Temperate and Boreal Forests; the Pan-European Forest Process on Criteria and Indicators for Sustainable Forest Management (formerly the Helsinki Process); Tarapoto Proposal of Criteria and Indicators for Sustainability of the Amazon Forest; the Near East Process, and CIFOR).

654 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 32:4]

tries.⁵⁴ Furthermore, a great deal of political momentum has been shored up to develop NFPs, given that all countries at UNFF-1 unequivocally agreed to develop NFPs, noting that they are one of the primary means of implementing the IPF and IFF Proposals for Action.⁵⁵ NFPs are increasingly being seen as the primary tool, if not a prerequisite, to taking forest action domestically. This includes action on implementing the IPF/IFF proposals for action and Rio outputs to achieve sustainable forest management more broadly. The general principles with respect to NFPs are that they should be a participatory, flexible, country-driven process, taking into account intersectoral approaches. Specific elements of a NFP include, *inter alia*,

- Systematic evaluation, planning and implementation of the IPF/IFF Proposals for Action through national plans and processes;
- Action plan (timetables, goals);
- Appropriate participatory mechanisms and effective partnerships;
- Decentralization (where applicable) and regionalization through empowerment of regional and local government structures;
- Conflict-resolution schemes;
- Capacity-building programme and awareness-raising;

⁵⁴ See generally *id.* at pt. III, National-Level Efforts to Support Sustainable Forest Management; National Forest Programmes. (PROFORII, hosted by the World Bank, is expected to spend US \$20 million over 5 years on NFPs in 6-8 "partner countries", while the FAO is launching an NFP Implementation Facility under a new "twinning arrangement" with PROFOR II. The budget is set at US \$32 million).

⁵⁵ *Towards the Development of the United Nations Forum on Forests Plan of Action: Report of the Secretary-General*, *supra* note 48, at 8. (The requirement to develop and implement NFPs is now unequivocal. All countries "will develop or strengthen, as appropriate, national forest programmes, as defined in the IPF/IFF Proposals for Action, or other integrated programs relevant to forests, with the aim of achieving an holistic and comprehensive approach to sustainable forest management.") See also, *Multi-year programme of work of the United Nations Forum on Forest: Report of the Secretary General*, *supra* note 46. (under the UNFF MYPOW, NFPs were chosen as a cross-cutting item, meaning that they will come up for discussion at each UNFF session through to 2005, rather than at a single session only).

- Monitoring and evaluation systems, including use of Criteria and Indicators;
- Policy, legislative and institutional reform;
- Recognition and respect for traditional and customary rights; and
- Secure land tenure agreements.⁵⁶

Many of these elements relate back to certain of the Rio Forest Principles. As such, NFPs can be a useful implementing tool and can create a bridge between global commitments and national action. However, there remain certain practical questions in terms of operationalizing NFPs, including how to translate these largely policy frameworks into on the ground action. Furthermore, there is no commonly agreed definition, nor any system of “quality control” or way of properly measuring results. It remains to be seen whether NFPs will be much improved from the previous Tropical Forestry Action Plan (TFAP) of the FAO⁵⁷, since most new NFP processes are still in their infancy.

A number of multistakeholder processes have also taken place, signaling the importance of engaging all actors if we are to make real and lasting progress. One such example was the Yaounde Summit, held in March 1999 and including five African Heads of State who pledged to protect vast tracts of forests in the Congo Basin. The innovative aspect of the Summit and resulting Declaration was that this event took place in partnership with governments of the region, and other organizations including the World Bank/WWF Alliance for Forest Conservation and Sustainable Use, and Conference of the Central African Moist Forest Ecosystems (CEFDHAC) and the Interna-

⁵⁶ See generally http://www.fao.org/forestry/foris/index.jsp?start_id=7208 (for specifics on NFPs).

⁵⁷ See generally *id.* (TFAP was adopted by the World Forestry Congress in June 1985 as an international framework for forest-related action. A trust-fund was established and managed by the FAO to fund these programmes. The TFAP ended up failing, largely because these programmes were not sufficiently flexible, country-driven, participatory or inter-sectoral. They were narrow in scope, and essentially donor-led. As such, “new” NFPs are meant to learn from these experiences, although evidence indicates that operationalizing many elements are extremely difficult.).

656 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 32:4]

tional Union for Conservation of Nature and Natural Resources (IUCN) – World Conservation Union.⁵⁸

The least amount of progress has been made in the forest sector in the area of capacity-building, cooperation, technology transfer and trade.⁵⁹ It has been noted that “trade, finance, and transfer of technology have been among the most difficult areas to reach consensus on effective programmes of action within the IPF/IFF processes . . . partly because the issues were wider than to be able to be resolved within forestry fora.”⁶⁰

Among one of the more critical emerging issues that has been garnering much attention of late is the issue of illegal logging, and forest law enforcement more broadly. It has been estimated that in many countries, illegal logging is similar in scope to legal production, while in others, it exceeds legal logging by a substantial margin.⁶¹ This problem can substantially undermine progress made on other issues, including establishment of protected areas. Furthermore, governments in some cases are losing hundreds of millions of dollars annually based on illegal activities in the forest sector. This issue did not receive much attention until recently, but may well be discussed at the World Summit. The Chairman’s Paper that emerged out of the second global preparatory session for the World Summit on Sustainable Development (WSSD) included language on illegal trade in timber and non-timber forest products, indicating that this issue may be taken up at the Summit, if it survives negotiations at the third and fourth global Prep-Com in March and May 2002 respectively.⁶²

It is anticipated that actions at all levels, and involving all stakeholders, will continue in the years to come. This will re-

⁵⁸ Other partners included: the DGIS – WWF Tropical Forest Portfolio in Gabon. WWF Belgium in partnership with the European Commission and DGIS; ECOFAC: in partnership with the European Commission, USAID and CARPE.

⁵⁹ See *Rio+10: Task Manager Report on Review of Progress in Implementing UNCED Agenda 21 Chapter 11 (Combating Deforestation) and Forest Principles*, U.N. FAO report (2001), available at http://www.fao.org/forestry/foda/international/rio_10-e.stm.

⁶⁰ *Id.* at 25.

⁶¹ World Bank, *Forest Sector Review* (New York: World Bank, 1999), at xiii.

⁶² See *Chairman’s Paper*, Commission on Sustainable Development acting as the Preparatory Committee for the World Summit on Sustainable Development, U.N. Doc. A/Conf.199/PC/L.1 (2002) at §IV, ¶16(c), available at http://www.johannesburgsummit.org/html/documents/prep2final_papers/conf199pcl1_eng.pdf.

quire strengthening and forging new and innovative partnerships, ensuring sufficient resources to facilitate implementation action, and coordinating and harmonizing activities to optimize results. Work toward implementing the Forest Principles and IPF/IFF Proposals for Action will continue, as guided by the UNFF and CPF. Of course, there will need to be flexibility to take on new and emerging issues, including illegal logging and others, in order to round out the global agenda.

B. IMPLEMENTATION ACTION AND THE UNFF

The UNFF was created based on the notion that there was no overarching framework for forests, nor any organization endowed with the mandate to deal holistically with all kinds of forests. This piecemeal approach to forest governance, it was argued, is ineffective, inefficient, and confusing. The backbone of much of the policy analysis and discussion that has taken place over the past decade has accordingly been about the existing gaps, overlaps, and areas of needed coordination, as well as weaknesses and opportunities in the global forest regime.

Now, with the establishment of the UNFF, a unique opportunity has arisen to better coordinate existing global forest obligations in the hopes of making progress toward sustainable forest management. The UNFF is the first globally agreed-upon permanent mechanism for forests. And, as it is the new home to forest issues worldwide, it is well positioned to cure some of the ills of the previous regime, by improved governance and a stitching together of the fractionated approach that has pervaded global policy until now.

Having said this, many questions remain as to how the UNFF will do its work, and whether it is even capable of delivering action on the ground. The MYPOW and PoA make clear that the responsibility for prioritizing and delivering action lies with countries.

The UNFF is not a panacea; still, there is the opportunity for it to serve as a central coordinating mechanism and contact point for future policy development and guidance in the forest sector. Further, the UNFF, along with the CPF, will hopefully facilitate an open exchange of information, so that innovations, experiences and data can be shared. Collectively, the various instruments, agreements, processes and initiatives represent all of the priority areas of concern, and constitute – in conjunc-

658 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 32:4

tion with the UNFF – a map for future action. It remains to be seen how all of these different sectors will be linked, but hopefully, in the spirit of cooperation, the attitude displayed in the years to come will be one of action and teamwork in the global forest sector.

VI. THE WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT (WSSD): SIGNIFICANCE AND OPTIONS FOR FORESTS

The WSSD is intended to be quite different from the Summit held in Rio ten years ago, primarily because the former is more about operationalizing sustainable development than it is about negotiating new agreements. In this regard, the WSSD has a difficult, ambitious road ahead of it, since it is much easier to speak of success when looking at concrete outputs such as treaties. Key Summit goals, in this regard, include identifying practical solutions that will accelerate the implementation of Agenda 21; forging a new North-South partnership for sustainable development that is balanced and equitable; and addressing poverty and development issues in tandem with environmental concerns. The Johannesburg event will need to move from talk to action, from commitment to implementation. This is nowhere more critical than in the forest sector, where years of discussions and negotiations have led to a myriad of commitments that are now crying out for progress to be made.

A. EMERGING SUMMIT AGENDA

The process of agenda-setting for the Johannesburg Summit has been to take a bottom-up approach. The issues on the formal agenda, which has yet to be set, commenced through a series of regional and sub-regional preparatory processes. In each region of the world – broken up into Latin America/Caribbean (LAC), Africa, Asia/Pacific, West Asia, and Europe/North America – regional and sub-regional preparatory meetings were held during late 2001. The idea was to hold multistakeholder meetings that would result in regional priorities, or “platforms for action”. These platforms include key challenges, opportunities and obstacles faced since Rio, as well as priorities for future action. In addition to these preparatory meetings, each region held eminent persons’ round tables,

meant to bring together experts from each region to contemplate key issues and provide suggestions for action.⁶³

The final reports from all of these meetings have been transmitted to the global WSSD preparatory process and are meant to shape the nature and scope of the final Johannesburg agenda. During the second global WSSD Preparatory Committee (Prepcom) held from January 25 – February 8, 2002 in New York, the Chairman prepared a draft paper as a basis for negotiations, which was intended to take into account, in a balanced fashion, the priorities that have emerged from the regions. Delegations “discussed” the paper, making modifications to it during the second week of the PrepCom. More targeted negotiations will take place at the third PrepCom, slated for March 25– April 5, 2002. As it stands, a number of paragraphs in the Chairman’s paper refer specifically to forests, including:⁶⁴

- Enhancing the implementation of the IPF and IFF proposals for action, as included in the UNFF Plan of Action, and intensify efforts for the management, conservation and sustainable development of forests, in particular the rehabilitation and restoration of degraded forests and lands;
- Enhance cooperation, coordination and synergies among international organizations and instruments related to forests, in the CPF; and
- Address the issue of illegal trade in timber, non-timber forest products, and genetic resources.

In addition, the Chairman’s paper devotes several paragraphs to the Convention to Combat Desertification, as well as related natural resource issues such as agriculture and freshwater.

Although there is some reference to forests in the existing Summit text, this issue has not received the same degree of attention as other environmental issues such as energy and climate change, or freshwater resources. This lack of direction

⁶³ Official Johannesburg Summit website, *supra* note 1, at www.johannesburgsummit.org/html/documents/prepcoms.html (for reports of all of the sub-regional and regional meetings).

⁶⁴ *Chairman’s Paper*, *supra* note 62, at §IV, 16(a)-(c).

660 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 32:4]

may be due in part to the fact that many countries are awaiting the outcome of the high-level ministerial segment at UNFF-2 to provide guidance. With both the UNFF and the Convention on Biological Diversity COP-6 in April 2002 debating forests, additional inputs into the WSSD agenda could be generated following these conferences.

The final WSSD global preparatory meeting will be held in Jakarta, Indonesia from May 27– June 7, 2002. It is possible that a successful UNFF-2 session may catalyze action on forests at WSSD PrepCom 3 and 4. Alternatively, forests may receive limited attention in Johannesburg other than in the way of new partnership and stakeholder announcements. What is needed is some direction, given that a new home for forests now exists in the UNFF, and that the possibility of commencing negotiations on a legally-binding instrument will likely not be considered until the final session of the UNFF (UNFF-5) in 2005.⁶⁵

B. POTENTIAL SUMMIT OUTPUTS – OPPORTUNITIES FOR FORESTS IN JOHANNESBURG

The second WSSD PrepCom, which was intended to be more of a backward-looking assessment of progress, actually took on greater significance than initially contemplated. With the Chairman's paper setting the stage for agenda-setting, governments and other stakeholders received an initial look at what might be expected in Johannesburg. The outputs of the Johannesburg Summit in relation to forests will take one of three forms:

- A Political Declaration at the Heads of State level – which should establish the global political base for moving towards sustainable development globally in the 21st century;
- The “Johannesburg Programme of Action” (JPOA) – which is expected to establish the enabling framework and means of implementation for sector and issue-

⁶⁵ See generally, *Multi-year programme of work of the United Nations Forum on Forest: Report of the Secretary General*, *supra* note 46 (pursuant to the UNFF MYPOW).

specific targeted achievements from governments and will be negotiated as a consensus document. The idea is for the JPOA to contain deliverable, time-bound commitments, with clear means of implementation. The Chairman's paper that emerged at PrepCom 2 is expected to form the basis of the JPOA; or

- Stakeholder commitments – which are likely to consist of a series of partnerships made by individual governments or groups of governments, with the involvement of major groups. These commitments are non-negotiated, for which there will be specific “pledging” events at the Summit to facilitate the process.⁶⁶

The Summit could therefore result in certain consensus-based commitments, both on means of implementation such as financing and technology-transfer, as well as on substantive issues such as illegal logging or restoration. In addition to this, there will be ample opportunity for governments, together with companies, international institutions, and other stakeholders to announce innovative commitments on issues that do not require consensus. Some of the types of action being discussed by participants in the WSSD preparatory process include:

- Universal ratification of the Convention on Biological Diversity and other relevant conventions;
- Adoption of programmes for the conservation and sustainable use of forest biodiversity, e.g. by CBD COP-6;
- Endorsement and further development of the UNFF Plan of Action, including further international efforts on means of implementation including capacity building, financial resources and technology transfer;

⁶⁶ Official Johannesburg Summit website, *supra* note 1 at <http://www.johannesburgsummit.org/html/documents/prepcom2.html> (for the outputs of PrepCom 2, including the Chairman's Paper, the Chairman's Summary of PrepCom 2, the Chairman's Summary of the Multi-stakeholder Dialogue Segment, and Proposals for Partnerships/Initiatives to Strengthen the Implementation of Agenda 21). Information on outputs was also obtained by the author through informal discussions with a variety of participants at PrepCom 2.

662 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 32:4]

- Holistic efforts to address illegal logging, illegal trade in timber, non-timber forest products and genetic resources;
- Increased attention to underlying causes of deforestation, e.g. mainstreaming forest issues in macro-level planning;
- Commitment to remove perverse incentives that reward unsustainable practices;
- Agreement on financial resources and valuation of forests;
- Mechanisms for strengthened stakeholder participation;
- Announcements by individual or groups of governments, companies, international institutions and NGOs of specific initiatives on forests, e.g. on forest landscape restoration, mountain catchments, steps toward credible certification, etc.;
- Agreement on new issues (e.g.: energy/transport) which could take the form of negotiated commitment by governments, and/or commitments by other stakeholders such as business and industry (either individual commitments, or sectoral);
- Launch of new multistakeholder partnership initiatives;
- Agreement on new institutions and/or new mandates for existing institutions; and
- New or reformed international legal instruments or institutions, which could link existing instruments or fill any gaps that exist in the current regime, and could possibly include the launch of new negotiation processes.

This menu of options for Johannesburg presents interesting opportunities in the forest sector. For instance, announcing new multistakeholder partnership initiatives, agreement on financing and other implementation issues, new government announcements on protected areas and on forest certification, and on global governance issues including harmonization of reporting formats and the like. Most important will be to find

ways to expedite the implementation of the Rio outputs and subsequent IPF/IFF proposals for action.

VII. CONCLUSION

Over the past ten years, a multitude of agreements and have been made on forest-related issues. We are now left with a legacy of proposals for action and other commitments, as well as a roadmap on implementation in the form of a UNFF programme of work. However, forests continue to degrade, implementation remains weak, and financial resources are scarce. The Johannesburg Summit represents one milestone, on the way to other important global events including future UNFF and CBD sessions, and the XII World Forestry Congress⁶⁷ and the V World Parks Congress in 2003.⁶⁸ The WSSD could be leveraged to make progress on critical international issues such as means of implementation of forest-related commitments and on other issues that require global action. Such other issues include forest law enforcement, international trade in forest products, harmful subsidies in the forest sector, and conservation issues such as designating new protected areas and undertaking new restoration initiatives.

While we have made a certain degree of progress on forest-related issues since the Rio Summit, evidence continues to show that forests are in decline. Just like Rio was a springboard to a decade of negotiations, it is hoped that Johannesburg will be a new springboard to implementing action. The Rio Forest Principles continue to act as a foundation, and as a source of inspiration. But now, nearly ten years on, there are a multitude of other commitments that have been made at different levels and by different stakeholders that have built on the Principles enshrined in the Rio document. Together, these all represent critical aspects of global forest governance. It is hoped that the appropriate synergies are forged through the

⁶⁷ See official World Forestry Congress website, at <http://www.wfc2003.org/> (the 12th Congress is slated to take place September 21-28, 2003 in Quebec City, Canada. The Congress takes place under the auspices of the FAO, but is hosted by different countries every five years. The last meeting was held in 1997 in Antalya, Turkey).

⁶⁸ See official World Parks Congress website, at <http://wcpa.iucn.org/wpc/wpc.html> (the 5th Congress will take place in Durban, South Africa, the theme of which will be "Benefits Beyond Boundaries." The Parks Congress is held under the aegis of IUCN – the World Conservation Union and takes place every ten years).

664 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 32:4

WSSD and future UNFF sessions and that “on the ground” conservation and sound management decisions are applied and enforced. As such, the focus will need to be not only on substantive issues, but also equally on means of implementation, including financing and technology transfer, capacity-building, and education in the forest sector. The Johannesburg Summit represents one of the best avenues globally to forge agreement on these issues, and it is hoped that the moment is seized to move forward on them.